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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/589,306	06/07/2000	Anthony Cyril Lowe	YO998-267X	8945

7590 10/03/2002

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EXAMINER

PARKER, KENNETH

ART UNIT

PAPER NUMBER

2871

DATE MAILED: 10/03/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/589,306

Applicant(s)

LOWE, ANTHONY CYRIL

Examiner

Kenneth A Parker

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 June 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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DETAILED ACTION

This application repeats a substantial portion of prior Application No. , filed , and adds and claims additional disclosure not presented in the prior application. Since this application names an inventor or inventors named in the prior application, it may constitute a continuation-in-part of the prior application. Should applicant desire to obtain the benefit of the filing date of the prior application, attention is directed to 35 U.S.C. 120 and 37 CFR 1.78.

Claim Rejections - 35 USC § 102

Claims 17 -20 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Neijzen, U.S. Patent # 5,929,956.

Claim 17-19 is written to, and Neijzen et al discloses (fig 3a-3c) a liquid crystal display with an incident and opposite side 14 and 9, diffusing liquid crystal 5, a and reflecting means 15 between the first and second substrates which reflects light larger than a given angle and passes light below a given angle (see abstract), and an absorber 10 on the other side. Structured and multilayer embodiments are shown (illustrated in figs 4 and 6). Therefore, these claims 17-19 are anticipated by this reference.

Claim 20 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Neijzen, WO 98/23996.

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Claim 20 written to, and Neijzen et al discloses (fig 3a-3c) a liquid crystal display with an incident and opposite side 14 and 9, diffusing liquid crystal 5, a and reflecting means 15 between the first and second substrates which reflects light larger than a given angle and passes light below a given angle (see abstract), and an absorber 10 on the other side. An angle dependent diffuser (illustrated in figs 4 and 6). Therefore, this claim is anticipated by this reference.

Please note that the diffuser has not been given the date of the parent application, as the diffusing layer as the reflector was not in the parent case as one of ordinary skill would not have determined that applicant was in possession of the combination with that feature. There are three separate elements that need to be discussed to clearly illuminate this issue

- 1) mirror like reflectors
- 2) diffuse reflecting reflectors
- 3) diffusers

Applicants original application only disclosed mirror like reflectors, and claimed and discussed to broader class "reflector. Diffuse reflecting reflectors are a specific type which were not disclosed, and appear not likely to be considered as meeting the written description requirement-however are not to what the claim is written to. Element #3, diffusers as typically used in the art and as used in the Neijzen reference, are substantially transmissive devices that radiate light in all directions, and are completely different than reflectors in there result and function, and are therefore not at all equivalents, and would clearly not have met the written

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description requirement. The application by Neijzen is a rare case where the fact that the reflector is “leaky”, the diffuser becomes useable in place of a reflector.

Affidavit/Declaration under 1.131

The declaration filed on 6/14/02 under 37 CFR 1.131 has been considered but is ineffective to overcome the references.

1) The evidence submitted is insufficient to establish a conception of the the invention in this country or a NAFTA or WTO member country prior to the effective date of the reference.

The evidence submitted is insufficient to establish a conception of the invention prior to the effective date of the **Neijzen, U.S. Patent # 5,929,956** reference, the affidavit or declaration and exhibits fail to clearly explain which facts or data applicant is relying on to show completion of the invention prior to the particular date. Specifically, the affidavit fails to set forth the facts by which applicant seeks to show conception, as applicant needs to assert that the fact is some event that occurred before the date of the reference. If the invention disclosures were submitted and dated before the date of the reference, then the affidavit should set forth this fact. For example, in the beginning of element #3 of the affidavit, add the statement “ Invention disclosures were submitted and dated before the filing date of Neijzen et al”. If the invention disclosures were made after that date, but are somehow being relied upon to show evidence the

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conception, then applicant should say how those disclosures should be construed as evidencing conception before the date of the reference.

2) The evidence submitted is insufficient to establish a reduction to practice of the invention in this country or a NAFTA or WTO member country prior to the effective date of the reference **Neijzen, U.S. Patent # 5,929,956**. No facts or evidence there of were presented in the affidavit indicating that the device was made and worked for its intended purpose before the date of the reference.

3) The evidence submitted is insufficient to establish diligence from a date prior to the date of the **Neijzen # 5,929,956** reference to either a constructive reduction to practice or an actual reduction to practice. No facts establishing diligence or evidence thereof was presented in the affidavit.

3) The reference **Neijzen, U.S. Patent # 5,929,956** is a U.S. patent or U.S. patent application publication of a pending or patented application that claims the rejected invention. An affidavit or declaration is inappropriate under 37 CFR 1.131(a) when the reference is claiming the same patentable invention, see MPEP § 2306. If the reference and this application are not commonly owned, the reference can only be overcome by establishing priority of invention through interference proceedings. See MPEP Chapter 2300 for information on initiating

interference proceedings. If the reference and this application are commonly owned, the

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patent may be disqualified as prior art by an affidavit or declaration under 37CFR 1.130.

See MPEP § 718.

4) The reference **Neijzen, WO 98/23996** is a statutory bar under 35 U.S.C. 102(b) and thus cannot be overcome by an affidavit or declaration under 37 CFR 1.131 (claim 20 only).

Interference

It is noted that applicant has copied a claim of prior US Patent #5,929,956. As applicant is claiming the same invention as a patent which has an earlier effective United States filing date by greater than 3 months and as applicant has not submitted the items required by 37 CFR 1.608(a) or (b) in that no corroborating affidavit was provided, the application has been rejected under 35 U.S.C. 102(e)/103. Applicant is advised that the patent cannot be overcome by an affidavit or declaration under 37 CFR 1.131 but only through interference proceedings. See MPEP § 2308 and note that advised that an affidavit under 37 CFR 1.608(b) or evidence and an explanation under 37 CFR 1.608(b), as appropriate, must be submitted.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth Parker whose telephone number is **(703) 305-6202**. The fax phone number for this Group is **(703) 308-7722**. Any inquiry of a general nature or relating to the status of this application or preceding should be directed to the Group receptionist whose telephone number is (703) 308-0956.

September 30, 2002



**KENNETH ALLEN PARKER
PRIMARY PATENT EXAMINER
GAU 2871**